

122 FERC 61,195
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Suedeem G. Kelly, Marc Spitzer,
and Philip D. Moeller.

Sierra Pacific Resources Operating Companies

Docket No. OA07-2-001

ORDER ON COMPLIANCE FILING

(Issued March 3, 2008)

1. On August 10, 2007, Nevada Power Company (Nevada Power) and Sierra Pacific Power Company (Sierra) (collectively, the Nevada Companies)¹ submitted a compliance filing setting forth the ordered revisions to the Sierra Pacific Resources Power Companies' Open Access Transmission Tariff (OATT) directed by the Commission in its July 13, 2007 Order.² As discussed below, the Commission conditionally accepts the Nevada Companies' proposed compliance filing to become effective July 13, 2007, as requested.

Background

2. In Order No. 890, the Commission reformed the *pro forma* OATT to clarify and expand the obligations of transmission providers to ensure that transmission service is provided on a non-discriminatory basis. Among other things, Order No. 890 amended the *pro forma* OATT to require greater consistency and transparency in the calculation of available transfer capability, open and coordinated planning of transmission systems and standardization of charges for generator and energy imbalance services. The Commission also revised various policies governing network resources, rollover rights and reassignments of transmission capacity.

¹ Sierra Pacific Resource Operating Companies is the entity that administers the Nevada Companies' joint OATT.

² *Sierra Pacific Resource Operating Companies*, 120 FERC ¶ 61,039 (2007). (July 13 Order).

3. The Commission established a series of compliance deadlines to implement the reforms adopted in Order No. 890. Transmission providers that have not been approved as independent system operators (ISOs) or regional transmission organizations (RTOs), and whose transmission facilities are not under the control of an ISO or RTO, were directed to submit FPA section 206 filings that conform the non-rate terms and conditions of their OATTs to those of the *pro forma* OATT, as reformed in Order No. 890, within 120 days from publication of Order No. 890 in the *Federal Register*, i.e., July 13, 2007.³

4. The Commission recognized, however, that some of these non-ISO/RTO transmission providers may have provisions in their existing OATTs that the Commission previously deemed to be consistent with or superior to the terms and conditions of the Order No. 888⁴ *pro forma* OATT, but which *pro forma* terms and conditions were modified by Order No. 890. The Commission provided an opportunity for such transmission providers to submit an FPA section 205 filing seeking a determination that a previously-approved variation from the Order No. 888 *pro forma* OATT substantively affected by the reforms adopted in Order No. 890 continues to be consistent with or superior to the revised *pro forma* OATT. The Commission directed applicants to make those filings within 30 days from publication of Order No. 890 in the *Federal Register*, i.e., April 16, 2007, and to request that the proposed tariff provisions be made effective as of the date of the transmission provider's FPA section 206 compliance filing, described above, except for imbalance-related provisions, which may become effective on the first day of the billing cycle following that date. The Commission also requested that applicants state that the Commission has 90 days following the date of submission to act under section 205.

³ The original 60-day compliance deadline provided for in Order No. 890 was extended by the Commission in a subsequent order. *See Preventing Undue Discrimination and Preference in Transmission Service*, 119 FERC ¶ 61,037 (2007).

⁴ *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036 (1996), order on reh'g, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048, order on reh'g, Order No. 888-B, 81 FERC ¶ 61,248 (1997), order on reh'g, Order No. 888-C, 82 FERC ¶ 61,046 (1998), aff'd in relevant part sub nom. *Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), aff'd sub nom. *New York v. FERC*, 535 U.S. 1 (2002).

Compliance Filing

5. On April 14, 2007, the Nevada Companies submitted its FPA section 205 compliance filing pursuant to Order No. 890.⁵ Specifically, the Nevada Companies filed to retain certain provisions of their Open Access Transmission Tariff (OATT) that vary from the non-rate terms and conditions of the *pro forma* OATT as modified in Order No. 890. The Commission found the proposed revisions to be consistent with the Commission's *pro forma* OATT, except for the lack of a mechanism to distribute imbalance charge revenues to non-offending customers. Accordingly, the Commission conditionally accepted the Nevada Companies' proposed amendments for filing to become effective July 13, 2007, subject to the Nevada Companies making a compliance filing within 30 days proposing a revenue distribution mechanism.⁶

6. The Nevada Companies' state that their current compliance filing is made in response to the July 13 Order. Specifically, the Nevada Companies submit revisions to Schedule 4 – Energy Imbalance Service and Schedule 9 – Generation Imbalance Service of their OATT proposing a mechanism for crediting imbalance penalty revenues to all non-offending customers and to the Nevada Companies on behalf of their own customers in accordance with the requirements of Order No. 890.

7. In creating this proposed mechanism for crediting imbalance revenues, the Nevada Companies explain that they reviewed filings by other transmission providers and that their proposal closely follows those proposed by the other transmission providers. The Nevada Companies state that the proposal defines Qualified Transmission Customer and Qualified Transmission Load as well as those who qualify for the credits. Finally, the Nevada Companies state that their proposal requires separate calculations for each of the transmission zones and requires the crediting be accomplished on a one-month lagging basis to afford time to accurately compute credits.

Notice of Filing and Responsive Pleadings

8. Notice of the Nevada Companies' compliance filing was published in the *Federal Register*, 72 Fed. Reg. 46,620 (2007), with comments, protests or interventions due on or before August 31, 2007. A motion to intervene and protest was filed by Truckee Donner

⁵ *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, 72 Fed. Reg. 12,266 (March 15, 2007), FERC Stats. & Regs. ¶ 31,241 (2007), *order on reh'g*, Order No. 890-A, 73 Fed. Reg. 2984 (January 16, 2008), FERC Stats. & Regs. ¶ 31,261 (2007).

⁶ July 13 Order at Ordering Paragraph B.

Public Utility District (Truckee Donner). The Nevada Companies filed a motion for leave to answer and answer to the protest.

9. Truckee Donner argues that the Nevada Companies' proposal will produce unfair results because of the unduly narrow proposed definition of a non-offending customer, or Qualified Transmission Customer. Specifically, Truckee Donner states that the Nevada Companies improperly consider a transmission customer to be "non-offending" (and thus eligible for a share of the revenue distribution) only if it has avoided incurring any imbalance charges for under-deliveries in an entire calendar month. That is, a transmission customer that incurs a penalty for under-delivery for even a single hour within a month would be completely excluded from the penalty revenue distribution for that month. Truckee Donner therefore argues that it would be almost impossible for a network or point-to-point customer with load and/or generation within the Nevada Companies' control area to be a Qualified Transmission Customer. Consequently, Truckee Donner states that the Nevada Companies' proposal would virtually assure that its own native load would receive all of the revenues.

10. Truckee Donner also argues that, because a customer is excluded as a Qualified Transmission Customer only if it has a penalty due to under-delivery at some point during the month, the customer will have an incentive to always err on the side of over-delivery. Truckee Donner states that since the Commission has eliminated that type of asymmetrical incentive in its Order No. 890 reforms to *pro forma* imbalance provisions, the Commission should be concerned with adopting mechanisms for distribution of penalty revenues that will revive such incentives.

11. Finally, Truckee Donner also seeks some clarification of the Nevada Companies' proposal. Specifically, Truckee Donner notes that the Nevada Companies' proposed limitation on eligibility for a share of imbalance revenues is articulated in Schedule 4 as "where such charge is greater than the *Hourly Pricing Proxy*" In Schedule 9, the language states "where such charge is greater than *incremental cost*" Truckee Donner is concerned that neither phrasing meshes with the pricing provisions in Schedules 4 and 9, which use the capitalized term "Transmission Provider's Incremental Energy Cost". Truckee Donner suggests that the terminology of the Nevada Companies' proposed revenue distribution mechanism be harmonized with the rest of the tariff language.

12. In their response, the Nevada Companies state that while the Commission stated its belief that transmission providers should have a consistent method for treating revenues received through imbalance penalties in excess of incremental cost, the Commission did not prescribe such methodology. The Commission, moreover, has yet to accept any methods proposed by various Transmission Providers. As such, the Nevada Companies state that while Truckee Donner is correct to note that the proposed mechanism would only credit imbalance penalties to those customers without a negative

deviation for the entire month, the Nevada Companies maintain that the proposed mechanism is reasonable and not unduly narrow.

13. The Nevada Companies confirm that Truckee Donner has correctly pointed out an error in the proposed tariff language in the Schedule 4 and Schedule 9 provisions. The Nevada Companies agree with Truckee Donner that the term “Transmission Provider’s Incremental Energy Cost” should be used consistently throughout Schedules 4 and 9 and have agreed to make the correcting change.

Discussion

14. Pursuant to Rule 214 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2007), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Rule 213(a)(2) of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2007), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept the Nevada Companies’ answer because it has provided information that assisted us in our decision-making process.

15. With respect to the mechanism for distributing penalty revenues above incremental cost, the Commission finds that the Nevada Companies’ definition of non-offending customers is unduly restrictive. We agree with Truckee Donner that incurring an imbalance charge for one single hour in the month should not make a customer ineligible for a share of penalty revenues for the entire month. In Order No. 890-A, the Commission clarified that the transmission provider should distribute the penalty revenue received in a given hour to those non-offending customers in that hour, i.e., those customers to whom the penalty component did not apply in that hour.⁷ Accordingly, we direct the Nevada Companies to file, within 30 days of the date of issuance of this order, a further compliance filing with a revised mechanism for the distribution of penalty revenues that defines non-offending customers on an hourly basis.

16. Additionally, the Nevada Companies are directed to correct the erroneous tariff language in Schedules 4 and 9 of the OATT by consistently using the term “Transmission Provider’s Incremental Energy Cost” as the Nevada Companies committed to correct in their answer to the protest.

17. As discussed above, we find that the proposed revisions are inconsistent with the Commission’s *pro forma* OATT. Accordingly, we will conditionally accept the Nevada Companies’ proposed amendments for filing to become effective July 13, 2007, subject

⁷ Order No. 890-A at P 333.

to the Nevada Companies making a compliance filing, as discussed above, within 30 days of the date of this order.

The Commission orders:

(A) The Nevada Companies' proposed amendments to their OATT are hereby conditionally accepted for filing to become effective July 13, 2007, as discussed in the body of this order.

(B) The Nevada Companies are hereby directed to make a compliance filing, as discussed in the body of this order, within 30 days of the date of this order.

(S E A L) Commissioner Wellinghoff not participating.

Kimberly D. Bose,
Secretary.